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abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 722.12 (d) and (e). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(h) Any determination made under paragraph (g) shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR part 4.

(i) No extension granted under paragraph (b) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (g).

[42 FR 62701, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 45 FR 67501, Oct. 10, 1980; 46 FR 41704, Aug. 17, 1981]

§ 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under § 722.12 of this part and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject

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of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this section shall be terminated as provided in § 722.11 of this part.

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the person to whom it is directed. If no such agent is reasonably available, a copy may be tendered to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order, or a vacation, modification or termination of a notice or order, may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in a conspicuous, easy-

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to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 722.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to

whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after the service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern the conduct of these informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.